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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 578

THOMAS PAPER STOCK COMPANY AND ALVIN E. SANDROFF, PETITIONERS

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 50–55) has not yet been reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on October 5, 1945 (R. 56). The petition for a writ of certiorari was filed on November 3, 1945. The jurisdiction

of this Court is invoked under Section 204 (d) of the Emergency Price Control Act, c. 26, 56 Stat. 23, 50 U. S. C. App. (Supp. III) 924 (d), as amended by Pub. No. 108, 79th Cong., 1st Sess., Sec. 6 (herein sometimes termed "the Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTION PRESENTED

Whether, under Section 2 (j) (3), added, on July 16, 1943, to the Emergency Price Control Act of 1942, as amended, an announcement by the Price Administrator that there is no practicable alternative to a standardization for effective price control is a condition precedent to the continued validity, after July 16, 1943, of a previously valid maximum price regulation containing such standardization.

STATUTE AND REGULATION INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, appear in the Appendix, *infra*, pp. 22–28. Maximum Price Regulation No. 30, and pertinent amendments thereto, appear in the Federal Register (7 F. R. 9732, 8 F. R. 12554).

STATEMENT

On November 21, 1942, the Price Administrator issued Maximum Price Regulation No. 30, establishing specific maximum prices for various

grades of wastepaper (7 F. R. 9732). So far as here relevant, the Regulation provided that unsorted wastepaper might not be sold to consumers thereof at a price higher than the maximum price prescribed for No. 1 mixed paper.

On July 16, 1943, the Emergency Price Control Act of 1942 was amended by the addition of Section 2 (j), the so-called Taft Amendment, which provides that

> Nothing in this Act shall be construed * * * (3) as authorizing the Administrator to standardize any commodity, unless the Administrator shall determine, with respect to such standardization that no practicable alternative exists for securing effective price control with respect to such commodity; or (4) as authorizing any order of the Administrator fixing maximum prices for different kinds, classes, or types of a commodity which are described in terms of specifications or standards, unless such specifications or standards were, prior to such order, in general use in the trade or industry affected, or have previously been promulgated and their use lawfully required by another Government agency.

For the purpose of this proceeding it is conceded that Maximum Price Regulation No. 30 "stand-

[1] On December 28, 1943, the section involved was amended by Amendment No. 6, 8 F. R. 17483. The amendment made no change relevant to the instant case.

unsorted wastepaper and, therefore, hin the purview of Section 2 (j) (3) of

September 11, 1943, the Administrator l the preamble to Maximum Price Regu- No. 30 by adding the following sentence

nsofar as this regulation uses specifica- ions and standards which were not, prior o such use, in general use in the trade or ndustry affected, or insofar as their use as not lawfully required by another Gov- rnment agency, the Administrator has de- ermined, with respect to such standardiza- ion, that no practicable alternative exists or securing effective price control with espect to the commodities subject to this egulation.

mendment was made by Supplementary No. 64,[2] which was accompanied by a state- the reasons involved in the issuance there- the same time the Administrator issued lementary statement of the considerations l in the issuance of Maximum Price Regu- No. 30.[3]

December 17, 1943, an indictment under 205 (b) of the Act was returned in the States District Court for the Northern

8. 12554.

lementary Order No. 64 and this supplementary of considerations appear at pages 29-37 and 9- tively, of the record in No. 67, this Term.

District of Illinois, alleging that at specified times between July 16 and September 11, 1943, petitioners had made sales of unsorted wastepaper at more than the maximum price prescribed by M. P. R. No. 30 (R. 4–5). On June 29, 1944, a civil action under paragraphs (a) and (e) of Section 205 was brought against petitioners by the Administrator in the same court, alleging similar violations (R. 5).

On June 15, 1944, petitioners filed a protest against Section 1347.14 (d) of the Regulation, pursuant to Section 203 (a) of the Emergency Price Control Act of 1942, as amended. It was contended in the protest that Maximum Price Regulation No. 30 was currently invalid. Petitioners further specifically urged that Section 1347.14 (d) of Maximum Price Regulation No. 30 should be declared to have been invalid between July 16, 1943, and September 11, 1943 (R. 8–9).

On June 30, 1944, the Stabilization Extension Act of 1944 (Pub. No. 383, 78th Cong., 2d Sess.), amending the Emergency Price Control Act, became effective. This Act added to Section 204 of the Emergency Price Control Act a new subsection (*e*), *infra*, pp. 25–28, which provides (1) for a limited right of defendants in proceedings under Section 205 to secure review of maximum price or rent regulations through a direct complaint to the Emergency Court of Appeals without prior resort to the administrative protest procedure of Section 203; and (2) for the stay or

dismissal of, or vacation of judgment in, actions brought under Section 205 under certain circumstances.

On July 29, 1944, the Acting Administrator issued an order, accompanied by an opinion, denying petitioners' protest (R. 9).[1] Thereupon, on August 26, 1944, petitioners filed a complaint with the Emergency Court of Appeals, pursuant to Section 204 (a) of the Emergency Price Control Act of 1942, as amended, seeking review of the denial of the protest (R. 9). On March 27, 1945, the Emergency Court dismissed the complaint, holding that the contested provision of Maximum Price Regulation No. 30 was currently valid and that the court had no jurisdiction under Section 204 (a) of the Act to consider the objection that the provision was invalid during the period July 16 to September 11, 1943, by virtue of the Administrator's failure to publish his determination that there was no practicable alternative for securing effective price control (R. 9, 148 F. 2d 831). Petitioners sought review of this decision of the Emergency Court of Appeals and certiorari was granted by this Court on June 4, 1945. No. 67, this Term.

On May 10, 1945, the District Court of the United States for the Northern District of Illinois, Eastern Division, in case No. 43 CR 735, granted the petitioners leave to file with the Emer-

[1] See pages 15-29 of the record in No. 67, this Term.

gency Court of Appeals a direct complaint under Section 204 (e) (1) to challenge the validity of Section 1347.14 (d) of Maximum Price Regulation No. 30 for the period between July 16 and September 11, 1943 (R. 13–15). A complaint under Section 204 (e) of the Act was filed by petitioners on June 8, 1945 (R. 1–5). The Emergency Court of Appeals dismissed the complaint on the merits (R. 56), holding that the enactment of the Taft Amendment on July 16, 1943, did not render Section 1347.14 (d) of Maximum Price Regulation No. 30 invalid between July 16, 1943, and September 11, 1943, when the Administrator announced his determination that there was no practicable alternative for effective price control to the standardization embodied in that section of the Regulation (R. 50–53).

ARGUMENT

1. As succinctly stated by the court below (R. 51):

> The narrow question which this case presents is whether a previously valid price regulation which, because there was no practicable alternative for securing effective price control, used a specification or standard not previously used or required, was rendered invalid by subsection (j) (3) of Section 2 from the time of the enactment of that subsection until the time when the Administrator determined and recorded the fact that no such alternative to the use of

the specification or standard existed. In other words, did the Taft Amendment require a prior determination by the Administrator of that fact in the case of a regulation which had been validly issued before the enactment of the Amendment and did it operate to invalidate the regulation in the interim?

We submit that the court below correctly answered this question in the negative, since it cannot reasonably be said that, in enacting the Taft Amendment, Congress intended to render immediately ineffective an undetermined, but possibly large, number of outstanding, unquestionably valid regulations.[5]

This construction is justified by the language of Section 2 (j) (3) and (4), particularly when that language is compared with the language used by Congress in other statutes,[6] and is not at variance with anything in the legislative history of

[5] The Taft Amendment did not automatically repeal outstanding regulations coming within its terms. *United States v. Pepper Bros.*, 142 F. 2d 340 (C. C. A. 3).

[6] Cf. the National Labor Relations Act, section 10 (c) 49 Stat. 454, 29 U. S. C. 160 (c): "* * * the Board shall state its findings of fact and shall issue * * * an order requiring such person to cease and desist from such unfair labor practice * * *;" the Agricultural Adjustment Act, as amended, section 8c (4), 49 Stat. 754, 7 U. S. C. 608c (4): "* * * the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, * * * that the issuance of such order * * * will tend to effectuate the declared policy of this title with respect to such commodity." See R. 17–18.

the Emergency Price Control Act and the amendments thereto. The Taft Amendment became law at a time when hundreds of maximum price regulations were in effect and the struggle against inflation was in a critical phase. Compare Executive Order 9328, Stabilization of Wages, Prices, and Salaries, April 8, 1943 (8 F. R. 4681). Only the most unequivocal language would justify the conclusion that in passing the Taft Amendment the Congress intended to require the virtual suspension of an indefinite number of maximum price regulations pending their review by the Price Administrator. The unreasonableness of the construction urged by petitioners is further emphasized by the fact that the crux of the pattern of administrative and judicial review established by Sections 203 and 204 of the Act is that an opportunity is given to the Price Administrator to reconsider the validity and reasonableness of his regulations and orders, and make findings thereon, prior to the institution of judicial proceedings. Compare *Yakus* v. *United States*, 321 U. S. 414, 438–439. In such a context it would be most unreasonable to strain the language of Section 2 (j) (3) into a requirement than an outstanding regulation which standardized a commodity was rendered inoperative until the Administrator announced his determination that such standardization was essential to effective price control.

The immediate effect of the Taft Amendment on regulations outstanding at the time of its pas-

sage was to render them subject, by way of protest, to specific new objections. Upon the passage of the Taft Amendment, persons could file protests against maximum price regulations to which they were subject on the assertion and showing that the regulations incorporate standards or specifications which were not in general use in the trade or industry prior to price control and which had not been promulgated and their use lawfully required by another governmental agency, and that it could not reasonably be said that there is no practicable alternative for effective price control to the standardization involved. Petitioners have at no time contended or sought to show that there is, or that between July 16, and September 11, 1943, there was, any practicable alternative to the standardization incorporated in Section 1347.14 (d) of Maximum Price Regulation No. 30.

The closest approach which petitioners have at any time made toward raising any question as to the existence or non-existence of a "practicable alternative" between July 16 and September 11, 1943, is their reference in the petition for certiorari to the Emergency Court of Appeals' "absolutely unfounded assumption that there was no practicable alternative to standardization prior to September 11, 1943" (P. 18, cf. pp. 8, 10). This argument, however, begs the question, since it proceeds on the erroneous assumption that the record must contain support for a factual finding

involved in the Administrator's action when that finding has not been attacked.

It may be observed, however, that the record is not devoid of support for this determination. The Supplementary Statement of Considerations Involved in the Issuance of Maximum Price Regulation No. 30 clearly shows that the conditions requiring the standardization were inherent in the operations of the industry and were constant, having presented an administrative difficulty at all times since the inception of price control. The same Statement of Considerations, issued on September 11, 1943, recited that:[1]

> Both consumers and dealers are in agreement that it is necessary to provide this penalty price upon sales of unsorted paper to consumers.

The Administrator's reference to the expression of opinion by consumers and dealers, necessarily given prior to the issuance of this Supplementary Statement of Considerations, manifestly demonstrates that the determination announced on September 11, 1943, applied to the preceding period. The fact that Supplementary Order No. 64 recites that it "shall become effective September 11, 1943" does not, as contended by petitioners (Pet. 7), indicate that the determination dates

[1] This Supplementary Statement of Considerations is reprinted in full in the record of No. 67, this Term, pp. 9–11. The paragraph specifically directed to Section 1347.14 (d) appears at pp. 10–11.

only from September 11, 1943. All that the effective date of the Supplementary Order means is that as of that date the text of regulations listed in the Supplementary Order is amended by the addition of specified language.

2. In an attempt to show that this case is of greater consequence than the Emergency Court's formulation of the question presented would indicate, petitioners have sought to inject into the case an issue of constitutional validity. They contend, in effect, that procedural due process is lacking unless the statute is construed to prohibit standardization by a regulation during any period prior to the Administrator's announcement that there is no practicable alternative for effective price control. The cases referred to by Judge Lindley, dissenting below, upon which petitioners rely,* do not, we submit, support the position that

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* *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 409, 432, and *United States* v. *B. & O. R. R. Co.*, 293 U. S. 454. In *Wichita Railroad & Light Co.* v. *Public Utilities Comm. of Kansas*, 260 U. S. 48, also cited by Judge Lindley, in holding that an administrative order was invalid because of the absence of findings, the Court said: "We rest our decision on the principle that an express finding of unreasonableness by the Commission was indispensable under the statutes of the State." In *Mahler et al.* v. *Eby*, 264 U. S. 32, also referred to by Judge Lindley, the Court required a petitioner in a habeas corpus proceeding to be held in custody while the case was remanded to the Secretary of Labor for the purpose of adding to the warrant of deportation the findings which the Court held were essential to its validity under the terms of the statute. In that case the Court relied on the *Wichita* case, *supra*.

procedural due process requires that administrative regulatory action not operate with respect to any period of time prior to the announcement of "findings" or "determinations" by the agency with respect to any facts upon which its authority depends.* Rather, at most, these cases stand for the rule that for the purpose of informed judicial review, it must appear on the record before the reviewing court that the necessary findings or determinations have been made so that, if they are challenged, the court may be in a position to determine whether the administrative agency has acted within the scope of its authority. Cf. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 197. Thus in *Twin City Milk Producers Ass'n* v. *McNutt*, 123 F. 2d 396, 398 (C. C. A. 8), the court concluded:

> * * * that the recitation as to the basis of the Administrator's action is collateral to the regulation proper; that such a formal recitation is not necessary, as a matter of statutory prescription, to give validity to the promulgating order; that it is simply a judicial requirement, imposed as a convenience in a review proceeding, to aid in satisfying legal conscience and in lightening judicial responsi-

* The Constitution clearly does not require the announcement of findings or determinations where the statute is silent on that question. Cf. *Pacific States Box & Basket Co.* v. *White, et al.*, 296 U. S. 176, 186.

> bility * * *. that where an administrative order has omitted to disclose the underlying basis of the official action, the courts may properly, in their sound discretion, and where the general public interest is involved, usually should, in order to avoid the necessity for summarily striking down the order, permit a showing to be made as to the basis of the official action, by amendatory or supplementary finding, and thereafter give consideration to the validity of the order in the light of the nunc pro tunc finding and showing.

Petitioners' constitutional objection therefore resolves itself into a contention that they have been subjected to sanctions under an "*ex post facto* law" because the Administrator announced his determination under Clause (3) of the Taft Amendment subsequent to the violations alleged in the pending enforcement actions (Pet. pp. 11–12, Question 5). But this Court has time and again held that corrective measures may be taken retroactively in order to perfect previously imperfect administrative action. *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 618–622; *United States* v. *Morgan* 307 U. S. 183; *Atlantic Coast Line* v. *Florida*, 295 U. S. 301; *Mahler* v. *Eby*, *supra*. Cf. *H. P. Hood & Sons* v. *United States*, 307 U. S. 588; *Twin City Milk Producers Ass'n* v. *McNutt*, 122 F. 2d 564 (C. C. A. 8). If due process required the announcement of findings or the holding of hearings as conditions precedent to

the lawful operation of administrative action, the cases above cited could not have been decided as they were.

If, as in the cases cited, administrative lapses may be corrected subsequent to the institution of judicial proceedings without contravening the due process clause, *a fortiori* there is no due process deprivation in a case like the present, where appropriate administrative action was taken long before petitioners sought administrative or judicial review.

It should be noted that even if the absence of an announcement of the Administrator's determination constituted a procedural deficiency in Maximum Price Regulation No. 30 between July 16 and September 11, 1943, it was not such a deficiency as would render the regulation indefinite so that petitioners might be left in doubt as to what obligations and prohibitions were imposed on them thereby. The Regulation was entirely clear, and petitioners had been subject thereto for an extended period of time prior to the enactment of the Taft Amendment. As pointed out by the Court below (R. 53):

> * * * if they [petitioners] were in doubt during that time it was open to them by protest to question the validity of the regulation and to secure a determination of that question. This they did not do. On the contrary they proceeded to violate the regulation without taking the steps

> which were open to them to test its continued validity. Under these circumstances they can hardly assert that they were denied due process by the failure of the Administrator to make his determination before they violated the regulation.

This conclusion is unassailable.[10]

Petitioners have had full opportunity to contest the validity of Section 1347.14 (d) of Maximum Price Regulation No. 30 at all times, including the period between July 16 and September 11, 1943. By invoking the statutory machinery for securing review by way of a protest filed prior to September 11, 1943, petitioners would have had an absolute right to judicial review. That they chose not to pursue this remedy does not establish any denial of due process. *Yakus* v. *United States*, 321 U. S. 414, 444. However, in this case, petitioners had a second opportunity of which they availed themselves and as a result of which they have secured a decision on the merits.

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[10] Since neither of the enforcement actions pending against petitioners has yet gone to judgment, and the present proceeding by its nature cannot determine petitioners' guilt or innocence, the second sentence in this quotation from the court's opinion is not factually established. However, a finding of violations is not essential to the logic of the court's position. If, as a matter of fact, which will be determined in the enforcement actions, petitioners did not violate the regulation, neither the present case nor No. 67, this Term, has any present vitality. The present proceeding has practical meaning and efficacy only on the assumption of violations. Judge Maris' statement loses none of its force when made hypothetically.

Again, assuming the correctness of petitioners' present position that the announcement of a determination by the Administrator was a condition precedent to the continued validity of the Regulation, it should be noted that petitioners had to decide that it embodied standards or specifications which were not previously in general use in the industry and which had not previously been promulgated and their use lawfully required by some other Government agency before they could venture to disregard the provisions of the Regulation. Having made that decision, the petitioners were not entitled to await the Administrator's announcement, then file the protest involved in No. 67, this Term, and rely on that as a timely claim of invalidity. It certainly cannot be said to be unreasonable, or a deprivation of due process, to hold that petitioners must at least register their views as to the invalidity of the Regulation with the Administrator before proceeding to violate it in reliance on those views. The Administrator, on the other hand, had many regulations outstanding which required re-examination in the light of the terms of the Taft Amendment.[11] Thus, a judgment as to the effect

[11] Amendments were required to any regulations which re-examination disclosed to be in conflict with the Taft Amendment. Two regulations were thus revised: Revised Maximum Price Regulation No. 339—Women's Rayon Hosiery, 8 F. R. 11741, issued August 23, 1943; Revised Maximum Price Regulation No. 304—Specified Utility Shirts, 8 F. R. 12315, issued September 4, 1943. See, Seventh Quarterly

Amendment on a single regulation
d as a condition precedent to certain
action by petitioners. On the other
dministrator undertook to reexamine
dred regulations to discover whether
was in conflict with the new legisla-
person, who, like petitioners, had
ant special attention given to a spe-
tion, and possibly to request inter-
ief,[12] had a simple procedure avail-

nitted, therefore, that this case pre-
ostantial constitutional issue warrant-
y this Court of the decision below. It

Price Administrator to Congress, dated Feb-
, covering the calendar quarter ended Septem-
t pp. 18–21. As a matter of administrative
forcement action has been instituted or prose-
Administrator for violations of such regula-
between July 16, 1943, and the date they
so as to obviate any conflict between them
Amendment. This practice was adopted
not clear that it was required under the ex-
tion provisions of the Act as it read prior to
on Extension Act of 1944. At the very least,
ar that there was an absolute obligation to
he statute in the absence of the filing of a
request for the suspension of the regulation
sition of the protest. Cf. *Yakus* v. *United*
at pp. 438–439.

for intermediate relief by petitioners would
have been granted because petitioners am-
ld not have established a *prima facie* case of
n the Tait Amendment and Maximum Price
o. 30. Petitioners in this proceeding thus
k to avoid liability for violations of a regula-
heir own silence and failure to seek relief.

is submitted further that the pendency of case No. 67, arising out of the decision of the Emergency Court of Appeals that petitioners' protest of June 15, 1944, was not properly filed under Section 203 (a) of the Act, does not add any force to petitioners' assertion that a constitutional issue is presented by the instant case. Petitioners have, in this case, enjoyed whatever rights they may be entitled to under the Constitution and the statute, and, as demonstrated in the motion to dismiss case No. 67, filed by the Solicitor General on November 6, 1945, that case is moot. It cannot add vitality to the case at bar.

3. The decision of the court below can have practical importance only in relation to enforcement actions, under Section 205 of the Act, based on alleged violations, between July 16 and September 11, 1943, of the limited number of regulations outstanding on July 16, 1943,[13] which fall within the scope of Section 2 (j) (3) of the Act. Because of the statutory one year limitation on the institution of enforcement actions under Section 205 of the Act, a decision by this Court could be of practical significance only in pending enforcement actions instituted prior to September

[13] The preambles to 56 maximum price regulations were amended on September 11, 1943, by the addition to each of a statement of the Administrator's determination that there was no practicable alternative for effective price control to the standardization embodied in the regulation. Supplementary Orders Nos. 55 through 71, 8 F. R. 12550–12556.

11, 1944, more than a year ago. Only by an examination of the files in all pending enforcement actions instituted in state as well as federal courts all over the United States by consumers, under Section 205 (e), or by the Administrator, an examination conducted either through the National Office or through the numerous District and Regional Offices of the Office of Price Administration, could we be in a position to state unequivocally whether there was any possibility that a decision by this Court in this case would be decisive in any other cases. Such examination is a practical impossibility. However, it can definitely be stated that to date no protest other than petitioners' has ever been filed against a maximum price regulation raising the objection here involved, and that leave to file a direct complaint under Section 204 (e) (1) of the Act raising this objection to any maximum price regulation, has never been granted to any person other than petitioners. Therefore, it appears highly improbable that the decision in this case will affect many other cases, if any.

It is submitted that for this reason alone this Court should decline to review the decision of the Emergency Court of Appeals.

CONCLUSION

The decision below is correct, and there is no warrant for further review. The petition should be denied.

Since petitioners have repeatedly requested that this case be consolidated with No. 67, we believe it appropriate at this time to direct the Court's attention to the motion, heretofore filed by the Solicitor General in No. 67, to dismiss the writ of certiorari.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

RICHARD H. FIELD,
General Counsel,
Office of Price Administration.

NOVEMBER 1945.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, Pub. No. 383, 78th Cong., 2d Sess. are as follows:

Sec. 2 (j) Nothing in this Act shall be construed (1) as authorizing the elimination or any restriction of the use of trade and brand names; (2) as authorizing the Administrator to require the grade labeling of any commodity; (3) as authorizing the Administrator to standardize any commodity, unless the Administrator shall determine, with respect to such standardization, that no practicable alternative exists for securing effective price control with respect to such commodity; or (4) as authorizing any order of the Administrator fixing maximum prices for different kinds, classes, or types of a commodity which are described in terms of specifications or standards, unless such specifications or standards were, prior to such order, in general use in the trade or industry affected, or have previously been promulgated and their use lawfully required by another Government agency.[1]

Sec. 203 (a) *At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof*

[1] Entire subsection (j) added by sec. 5 (a), Public Law 151, 78th Cong., 1st Sess. (July 16, 1943), 57 Stat. 566.

specified in section 206,[2] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing,[4] the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in con-

[2] As amended by sec. 106 of the Stabilization Extension Act of 1944. The section formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

[3] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days."

[4] As amended by sec. 106 of Stabilization Extension Act of 1944. At this point the following language was stricken out: "or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later."

nection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * *

Sec. 204 (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the

protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final

disposition of the case by the Supreme Court.

* * * * *

(e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 *of this Act or section 37 of the Criminal Code*, involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated *or conspired to violate*. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 203 (a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the Administrator

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Italicized words added by sec. 6, Pub. No. 108, 79th Cong., 1st Sess. (1945).

or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

(2) In any proceeding brought pursuant to section 205 *of this Act or section 37 of the Criminal Code*,[5] involving an alleged violation of any provision of any such regulation, order or price schedule, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provisions;

(ii) during the pendency of any protest properly filed by the defendant under section 203 prior to the institution of the proceeding under section 205 *of this Act or section 37 of the Criminal Code*, setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

(iii) during the pendency of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

Notwithstanding the provisions of this paragraph, stays shall be granted thereunder in civil proceedings only after judg-

[5] See footnote 5, page 26.

ment and upon application made within five days after judgment. Notwithstanding the provisions of this paragraph, in the case of a proceeding under section 205 (a) the court granting a stay under this paragraph shall issue a temporary injunction or restraining order enjoining or restraining, during the period of the stay, violations by the defendant of any provision of the regulation, order, or price schedule involved in the proceeding. If any provision of a regulation, order, or price schedule is determined to be invalid by judgment of the Emergency Court of Appeals which has become effective in accordance with section 204 (b), any proceeding pending in any court shall be dismissed, and any judgment in such proceeding vacated, to the extent that such proceeding or judgment is based upon violation of such provision. Except as provided in this subsection, the pendency of any protest under section 203, or judicial proceeding under this section, shall not be grounds for staying any proceeding brought pursuant to section 205 *of this Act or section 37 of the Criminal Code;*[5] nor, except as provided in this subsection, shall any retroactive effect be given to any judgment setting aside a provision of a regulation or order issued under section 2 or of a price schedule effective in accordance with the provisions of section 206.[6]

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[5] See footnote 5, page 26.

[6] Entire subsection (e) added by sec. 107 (b) of Stabilization Extension Act of 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1945